



# SABERA SINGH & ASSOCIATES

ATTORNEYS - NOTARIES - CONVEYANCERS

## **Information brochure: Important Clauses your Agreement should contain**

Have you ever had issues with a clause in your agreement? This could be detrimental to your business, and could cost you money in the long term.

In order to safeguard your business against legal action, non-payment and the like, your contract should be drafted in such a way as to ensure that your clients comply with their end of the bargain, and also to protect your company against possible claims against it.

### **Here are some pointers of what your agreement should contain:**

1. Your client must be well described in the agreement. This includes detail like the company's name, registration number and registered address.
2. The address that your client chooses in the agreement should be noted as the client's *domicilium citandi et executandi*. This means that summons may be served on this address even if the client is no longer trading from it. It is a very handy tool to include an e-mail address and consent that any notices may be sent by e-mail should it become necessary.
3. The signatory of your client should be authorized to so bind the client and proof thereof should be insisted on.
4. The services or goods provided should be sufficiently described in your agreement.
5. Pricing relevant to the services or goods that you provide should be specified. An updated price list should be provided to the client at each increase and should be signed by both parties.
6. The duration of the agreement should be specified if that is applicable. Should the agreement be of the sort that does not expire, that should be specified.

7. You should ensure that liability for your product or service is limited to liability in cases of gross negligence only. If a simple mistake slips in, this will limit the client's rights to withhold payment or cancel the agreement.
8. Warranties or guarantees should be explicitly given if they are applicable; and if they are not applicable this too should be clearly specified.
9. It is very important for the agreement to contain a well written breach clause. This contains details of what constitutes a breach and how it should be reacted upon. The first thing an attorney will look at in a dispute is this clause.
10. Your contract should include a termination clause which sets out the circumstances in which it is acceptable that the agreement be cancelled as well as the cancellation notice period that is applicable.
11. Your agreement may contain a clause regarding which Court would be applicable in circumstances where it becomes necessary, you are in a position to elect the Magistrate's Court's Jurisdiction, which will necessarily result in quicker and less costly litigation should it come to that.
12. It is also important to confirm in your agreement that any legal action as a result of the agreement will result in attorney and own client costs being requested.
13. A powerful clause to add is a consent from the client that you may do a credit bureau check and may elect to not contract with the client if their credit report is not to the company's satisfaction.
14. You may also add a clause wherein the client consents to the information being listed on the credit bureaus should the client default on payment or in another way breach the agreement.
15. Should your client default on payment, and interest is provided for in your agreement, it is most efficient to specify the percentage that it will be charged at. Including a percentage at for example, the rate charged by a certain bank at that time, will create the additional burden of proving what this interest rate was. This may even result in an additional witness should any dispute be referred to court.
16. Your agreement should contain a clause advising that the entire agreement is contained in the document that is signed and that amendments must be done in writing. This prevents disputes of a "he said, she said" kind of nature.

Spending the time and money to have a watertight contract drafted is most definitely the wise choice to make and will save money in the long term. A standard contract with variables may be drafted by your legal practitioner at a once off fee and re-used for all new clients. Contact us for more information.